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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1987

Addendum

NIGER

[3 May 1991]

1. The Republic of the Niger acceded to the International Covenant on Civil and Political Rights and to the Optional Protocol under Ordinance No. 86-018 of 24 April 1986.

2. At the time of accession, the Niger was still living under a state of exception, more specifically a military régime. The process of democratization of the life of the nation, however, was initiated as early as 1983, since it was on 3 August of that year that the body called the National Development Council (CND) was set up for the purpose of formulating a draft National Charter forthwith. That draft, described as "stemming from the people" and as "the primary source of laws and regulations intended to govern the operation of all the institutions of the State" was designed, among other things, to define the rights and duties of citizens and their role in the work of building the nation.

3. The National Development Council (CND), consisting of representatives of all levels of society, successfully carried out the task assigned to it and the National Charter was adopted by referendum on 14 June 1987. As planned,

it constituted the basis for formulating the Constitution of the Second Republic, which was also adopted by the people, on 24 September 1989.

4. It can therefore be said that the Republic of the Niger is once again a country governed by the rule of law, as stipulated moreover by article 11 of the Constitution.

5. This is evidenced by the Constitution's endorsement of the main international instruments on human rights to which the Niger has acceded.

6. For example, the preamble of the Constitution declares that "the people of the Niger proclaim their devotion to the principles of democracy and human rights as set out in the Universal Declaration of Human Rights of 1948 and the African Charter of Human and Peoples' Rights of 1981 and as guaranteed by the present Constitution."

7. A number of general principles of positive law and of principles laid down by the above-mentioned texts are also included in the Constitution and form the subject of a number of articles. This is true of the following principles: (a) government of the people by the people and for the people (art. 7); (b) the fact that sovereignty lies with the people (art. 8); (c) universal, equal and secret suffrage (art. 10); (d) the equality of all before the law, without distinction as to origin, race, sex or religion (art. 11). This is the article which declares the Republic of the Niger to be a country governed by the rule of law, that it respects all beliefs, that any particularist propaganda of a regionalist, racial or ethnic character is punishable by law and that any manifestation of ideological or philosophical intolerance is punishable by law.

8. Similarly, under article 13 "... the present Constitution guarantees citizens all the rights and freedoms recognized by the National Charter, and particularly freedom of opinion and thought, expression, conscience, worship, movement, residence, correspondence and communications, assembly, association, initiative, the press, publication and publicity, and the right to work, to justice, education, health, security, ownership of property, information and the right to demonstrate.

All these rights and freedoms shall be exercised in observance of the laws and regulations in force".

9. Other no less important principles are also embodied in the Constitution. They are: (a) the principle of the rule of law. In this connection, article 81 specifies that justice is rendered throughout the country in the name of the people and in strict observance of the rule of law and the rights and freedoms of all citizens. Article 82 specifies that no one may be prosecuted other than under a law issued in due form before the act impugned; (b) habeas corpus. Under article 84, no one may be arbitrarily detained. Everyone charged with an offence is presumed to be innocent until proved guilty in proceedings which afford him the indispensable guarantees for his defence. The judiciary, as the guardians of personal freedom, are responsible for ensuring observance of this principle under the conditions specified by law.

10. This guarantee of personal rights is also accompanied by judicial guarantees.

Judicial guarantees of the observance of civil and political rights

11. A number of texts calculated to ensure observance of the provisions of article 84 of the present Constitution were already in existence, for example:

(a) Act No. 61-33 of 14 August 1961, containing the Code of Criminal Procedure. The Act guarantees the essential rights of the defence as well as those of individuals;

(b) Act No. 61-27 of 15 July 1961, containing the Penal Code, in which articles 265 and 271 penalize breaches against the freedom of the individual in general. More particularly, articles 265 to 268 penalize acts committed by those who, without orders from the lawfully constituted authorities and other than in cases in which the law prescribes an arrest, have detained or sequestrated any persons (1 to 10 years' imprisonment). The penalties range from 10 to 20 years' imprisonment if the arrest involves a forged order by the authorities or a false uniform or is accompanied by death threats. Article 269 stipulates imprisonment for anyone who takes or gives a human being as a pledge, while article 270 penalizes anyone who infringes the freedom of another person.

12. A whole range of remedies is available for implementation of the judicial guarantees of the observance of civil and political rights:

(a) In administrative matters, the remedy of action for illegality is, in particular, available to private individuals, who can institute proceedings before the Administrative Chamber of the Supreme Court against decisions by administrative authorities, pleading disregard of legal forms, breach or wrong application of the law, lack of jurisdiction or excess of powers;

(b) In addition, Act No. 62-11 of 16 March 1962, on the organization and the jurisdiction of the courts of the Republic of the Niger, extended the jurisdiction of the ordinary courts to administrative matters. In accordance with article 58, paragraph 2, of the Act, "they (the courts) deal with all administrative disputes with the exception of actions for illegality, subject to appeal before the Court of Appeal";

(c) Similarly, the Administrative Chamber deals with applications for cassation directed against final decisions rendered by the courts dealing with administrative matters, as well as applications alleging absence of decision, conflicting judgements, default or inadequacy or obscurity of stated reasons.

13. In addition to these remedies, there are other measures for the protection of citizens that strengthen the arsenal of the law.

Measures to prevent discrimination in the exercise of rights

14. This principle is laid down in article 11 of the Constitution, which has been mentioned already. In support of this text, article 102 of the Penal Code (Act No. 61-27 of 15 July 1961) states that any act of racial or

ethnic discrimination, any regionalist propaganda or any demonstration contrary to freedom of conscience or freedom of worship which is liable to give rise to discord among citizens shall be punishable with one to five years' imprisonment and by local banishment.

15. In the light of the foregoing, it will be seen that in the Niger, there are fundamental legal provisions to guarantee the protection of civil and political rights. Even more significant is the strengthening of the process of democratization, in which the first stage has been the Niger's changeover to a multi-party system.

16. It was soon found out that certain principles laid down by the National Charter (which started to be drawn up in 1983) and incorporated into the Constitution are no longer consistent with the aspirations of the people. This is true of the principles set out in articles 16 and 18 of the Constitution, which institute a single political structure, namely the National Movement for the Development Society (MNSD), which "determines the country's general policy on the basis of the National Charter as the frame of ideological reference and as the fundamental source of that policy", and of article 19, in accordance with which "the leadership of the country is founded on the principle of the united leadership of the State and the Movement".

17. Accordingly, following the demands of numerous socio-professional associations, the Government of the Niger finally opted for pluralism. The decision was taken in conformity with the recommendations of the ad hoc Committee set up to review the Constitution and was the subject of a solemn declaration by the President of the Republic in the National Assembly on 15 November 1990.

18. At its meeting of 5 December 1990, the Supreme Council for National Guidance (CSON), which was the highest authority of the State before the revision of the Constitution, not only endorsed the declaration by the President of the Republic but also established a calendar for implementation of the reforms envisaged.

19. Since then, some 15 political parties have been provisionally authorized and they carry out their activities freely.

20. Further stages in the process of democratization of the Niger will consist in holding a National Conference planned for May 1991 and in arranging for municipal and general elections by the end of 1992.

21. The National Conference will no doubt have more to say on developments in the process of democratization in the Niger.

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